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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,846	05/16/2006	Heino Weigand	GK-ZEI-3305/500343.20326	7835
26418	7590	07/16/2007		
REED SMITH, LLP ATTN: PATENT RECORDS DEPARTMENT 599 LEXINGTON AVENUE, 29TH FLOOR NEW YORK, NY 10022-7650			EXAMINER JONES, JAMES	
			ART UNIT	PAPER NUMBER
			2873	
			MAIL DATE	DELIVERY MODE
			07/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/595,846

Applicant(s)

WEIGAND ET AL.

Examiner

James C. Jones

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on amendment filed on 4/18/2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Response to Amendment***

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 21 applicant is claiming "the movement is carried out in such a way that the patient can easily follow the fixation mark and in way that any to limit unwanted and uncontrolled movements of eye" which renders the claim vague and indefinite. It is not clear as to whether or not the applicant is claiming that the movement of the fixation mark is carried out to limit both unwanted and uncontrolled movements of the eye or if the movement is carried out in such a way that the patient can easily follow the fixation mark and in a way to limit any one of unwanted and uncontrolled movements of the eye, it needs to be disclosed if movement is carried out to limit both of unwanted and uncontrolled movement of the eye or if movement is carried out to limit unwanted or uncontrolled movement of the eye. It is therefore not clear to what applicant is claiming rendering the claim vague and indefinite. For the purpose of examination, the assumed meaning is that claim 21 is claiming, "the movement is carried out in such a way that the patient can easily follow the fixation mark and in a way to limit any one of unwanted and uncontrolled movements of the eye".

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sponsel et al. (2004/0046934) hereafter '934 in view of Eydelman et al. (5206671) hereafter '671.

Regarding claim 11-16 and 21 '934 discloses a method for displaying a fixation mark for ophthalmologic treatment devices (par. [0033]) comprising the steps of: projecting the fixation mark to be displayed in the field of vision of the eye to be treated (fig. 3-7, par. [0047]); moving the fixation mark in the field of vision of the patient, wherein the movement is carried out in such a way that the patient can easily follow the fixation mark; movement of the fixation mark in the field of vision of the patient is carried out continuously or discontinuously, according to a predetermined sequence, or randomly; the fixation mark is moved discontinuously in the field of vision of the patient, diagnosis or therapy being carried out only within short stationary phases of the fixation mark; the fixation mark is moved in the field of vision of the patient and a measurement or therapy is carried out while the eye follows the movement of the fixation mark; the movement of the fixation mark is used to position the eye in a specific manner; the movement of the fixation mark is carried out through variable projection on a stationary

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display; and wherein movement is carried out in such a way that the patient can easily follow the fixation mark and in a way to limit any one of unwanted and uncontrolled movements of the eye" (assumed meaning) ( fig. 3-7, par. [0047]-[0048]) but does not specifically disclose the ophthalmic device allowing the patient to orient the eye to be treated on the fixation mark through foveal fixation. '671 teaches that in an ophthalmic device it is desirable to allow the patient to orient the eye to be treated on the fixation mark through the foveal fixation (col. 1, ln 66-68) for the purpose of reducing undesired movements of the eye. Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the method of allowing the patient to orient the eye to be treated on the fixation mark through the foveal fixation in the ophthalmic device of '934 as modified by '671 since '671 teaches that in an ophthalmic device it is desirable to allow the patient to orient the eye to be treated on the fixation mark through the foveal fixation for the purpose of reducing undesired movements of the eye.

Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sponsel et al. (2004/0046934) hereafter '934 in view of Eydelman et al. (5206671) hereafter '671 further in view of Jernigan (3984156) hereafter '156.

Regarding claims 17-20 Sponsel ('934) and Eydelman ('671) disclose as set forth above but does not specifically disclose the movement of the fixation mark is carried out by an XY mirror unit; a movement of the fixation mark in the field of vision of the patient of a diagnostic beam or therapeutic beam is carried out by a XY mirror unit; a movement of a diagnostic beam or therapeutic beam is corrected by a predetermined

movement of the fixation mark; and a movement of a diagnostic beam or therapeutic beam is corrected by the movement of the fixation mark which is acquired online. '156 further teaches that in an ophthalmic device it is further desirable to have the movement of the fixation mark carried out by an XY mirror unit; the movement of the fixation mark an of a diagnostic beam or therapeutic beam carried out by the same XY mirror unit; the movement of a diagnostic beam or therapeutic beam corrected by the predetermined movement of the fixation mark; and the movement of a diagnostic beam or therapeutic beam corrected by the movement of the fixation mark which is acquired online (fig. 1, col. 15, ln. 42-68 and col. 16, ln. 1-17) for the purpose of monitoring the movements of the eyes and responses of the target positions during measuring and evaluating a patient's visual field (abstract, ln. 1-8 of '156). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have the method of the movement of the fixation mark carried out by an XY mirror unit; the movement of the fixation mark an of a diagnostic beam or therapeutic beam is carried out by the same XY mirror unit; the movement of a diagnostic beam or therapeutic beam is corrected by the predetermined movement of the fixation mark; and the movement of a diagnostic beam or therapeutic beam is corrected by the movement of the fixation mark which is acquired online in the ophthalmic device of '934 as modified by '671 and further modified by '156 since '156 further teaches that in an ophthalmic device it is further desirable to have the movement of the fixation mark carried out by an XY mirror unit; the movement of the fixation mark an of a diagnostic beam or therapeutic beam carried out by the same XY mirror unit; the movement of a diagnostic

beam or therapeutic beam corrected by the predetermined movement of the fixation mark; and the movement of a diagnostic beam or therapeutic beam corrected by the movement of the fixation mark which is acquired online for the purpose of monitoring the movements of the eyes and responses of the target positions during measuring and evaluating a patient's visual field.

### ***Response to Arguments***

Applicant's arguments filed 4/18/2007 have been fully considered but they are not persuasive.

I. The applicant argues that the cited references fail to disclose or teach moving the fixation mark in the field of vision of the patient, wherein the movement is carried out in such a way that the patient can easily follow the fixation mark.

II. The applicant argues that Sponsel ('934) does not use a fixation mark during the treatment of the eye, but rather uses displaying a fixation target, which is moved to different places of the visible field.

Both arguments have been fully considered.

Regarding argument I the references disclose that the fixation target will be moved in a continuous path. By "continuous" it is meant that moving the fixation target would not, for instance, jump from the left most corner of the screen to the right most corner of the screen; rather, the moving fixation target would move continuously about the screen so that a patient may readily follow it without making drastic, discontinuous eye or head movements which, clearly makes the target easier to follow.

Regarding argument II applicant is claiming “**projecting the fixation mark to be displayed in the field of vision of the eye to be treated**” applicant does not claim using a fixation mark “during the treatment” of the eye. The terminology “during the treatment” means at the present time of the treatment of the eye the fixation target should be used. The claim is stating that the fixation target is displayed in the field of the eye “to be treated”. “To be treated” meaning at some time in the future and not necessarily at the time during the treatment of the eye the fixation target will be used.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

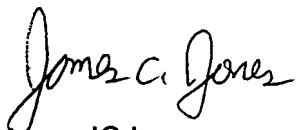


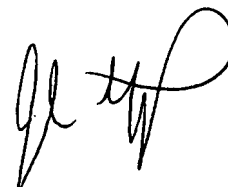
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Jones whose telephone number is (571) 270-1278. The examiner can normally be reached on Monday thru Friday, 8 a.m. to 5 p.m. est. time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
JCJ

  
JORDAN SCHWARTZ  
PRIMARY EXAMINER